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December 18, 2009

Honorable Deborah A. Batts
 United States District Court
 United States Courthouse
 500 Pearl Street, Room 2510
 New York, New York 10007

DEC 22 2009

RE: Europa Maritime v. Manganese Trans Atlantic
 Corporation; Managers Systemar Co. Ltd.,
 S.D.N.Y. 1:08-cv-09523 (DAB)
Our File: GM-09-3696 ECR/CGM

Dear Judge Batts:

MEMO ENDORSED

We are newly retained counsel for Defendant, Manganese Trans Atlantic Corp., ("MTAC") in the above entitled action. Prior counsel for MTAC had sought, and been granted, leave of Court to appoint substitute counsel up to December 5, 2009.

We write to respectfully request an opportunity to be heard in respect of this Court's Memo Endorsement Order dated November 10, 2009, in light of recent case law in this District on the issue of whether a pre-Jaldhi and Hawket arrangement to set aside funds and suspend the continuous attachment of EFT's survives *quasi in-rem* jurisdiction in light of the Jaldhi and Hawket holdings. Alternatively, defendant respectfully seeks certification of this issue to the Second Circuit in light of divergent views expressed by judges in this District.

denied
 DAB
 1/8/10

In BC Trading International v. Bow Cement SA, 2009 U.S. Dist. Lexis 111889 (SDNY November 25, 2009), Judge Koeltl rejected the argument which the plaintiff made here that because the defendant consented to placing funds in an escrow account, the defendant waived any jurisdictional defense which arose after Jaldhi was decided. Judge Koeltl vacated the attachment since the parties had expressly reserved their rights and defenses in the stipulation agreeing to escrow the funds. In the instant case, the parties similarly entered into their agreement subject to "all defenses going forward."

Deborah A. Batts
 DEBORAH A. BATTES 118110
 UNITED STATES DISTRICT JUDGE

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In Western Bulk Pte. Ltd. v. Inspat Industries Limited, 2009 U.S. Dist. 109374 (November 20, 2009) and in Panamax Bulk AS v. Dampskeibsselskabet, 2009 WL 3853422 (S.D.N.Y. November 18, 2009), Judges Pauley and Rakoff respectively ruled that the defendants' deposit of funds into the Court Registry Investment System (CRIS) did not constitute a waiver by the defendants in those cases of the personal jurisdiction defense in light of *Jaldhi* and *Hawket*. In Panamax, Judge Rakoff denied plaintiff's motion for reargument but granted its application for a stay, provided plaintiff filed for an expedited appeal. See, Panamax, 08 Civ. 8601 (JSR) (SDNY December 4, 2009).

We are aware of other orders issued in this District by Judges Marrero and Kaplan in Transfield ER Cape Ltd. v. Crownland Int'l Co. Ltd., 08 Civ. 8602 (SDNY October 28, 2009) and Americas Bulk Transport Ltd., 07 Civ. 3818 (LAK), which reach a different result than that reached by Judges Koeltl, Pauley and Rakoff. We believe this underscores the importance of either permitting full briefing of this issue before your Honor or immediate certification of this issue to the Second Circuit Court of Appeals.

We thank your Honor and your staff for your consideration to the parties in respect of our request.

Respectfully submitted,


Edward C. Radzik

ECR:kt

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